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SUBJECT: RECENT ECCC DEVELOPMENTS

11. (SBU) Summary. Recent meetings concerning the Extraordinary Chambers have highlighted funding gaps and the need for additional support from donors. The role of the judicial police is looming as an issue requiring clarification and possible donor intervention with the RGC to ensure that the ECCC receives appropriate MOI support. Victim/witness support remains an underfunded area. Defense Office Director Rupert Skilbeck provided a briefing on his office's staffing, budget, and operational plan during an October 26 Friends of the ECCC meeting. Separately, David Tolbert, who has prior experience working with the ICTY, met with ECCC officials in late October during an OSJI-sponsored visit, and provided the Embassy with his observations on shortcomings in the current ECCC administration. End Summary.

October 26 Friends of the ECCC Meeting  
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12. (SBU) During a Japanese Embassy-sponsored Friends of the ECCC meeting on October 26, ECCC Director of Administration Sean Vissoth highlighted recent progress by the ECCC since the last Friends meeting in August: continued work by the Co-Prosecutors and Co-Investigating Judges, Principal Defender Rupert Skilbeck's arrival, finalization of the draft internal rules by the Rules Committee, scheduling of a plenary session for the judges from November 20-25, donation of pre-fabricated structures for use as a temporary detention facility at the ECCC site by the Government of Japan (USD 45,000), ECCC website ([www.eccc.gov.kh](http://www.eccc.gov.kh)) established, fifth round of personnel recruitment (93 international and Cambodian staff hired so far), and an independent audit will be conducted in December 2006 with another to follow in January 2007.

13. (SBU) Vissoth noted that the ECCC has a number of challenges in the short term, mostly surrounding the inadequate travel budget for the staff to conduct public outreach. The public affairs office continues to work with NGOs to use the latter's programs as a vehicle for public outreach, and Vissoth cited the recent Center for Social Development (CSD)-sponsored public forum in Kratie province on the Khmer Rouge trials that involved both Canadian Co-Prosecutor Robert Petit and Cambodian Co-Prosecutor Chea Leang as an example. DC-CAM continues to bring several hundred people every month to the court site, and ECCC personnel are hosting numerous official visitors and training sessions each month. The draft criminal procedure code is with the National Assembly awaiting passage, and will form the basis for the ECCC's internal rules; the rules committee

has worked from the draft code in the preparation of the court's internal draft rules. The rules have been finalized and are undergoing translation into the court's three languages (English, Khmer, and French).

14. (SBU) Deputy ECCC Administrator Michelle Lee argued that some of the funding gaps identified in a recent OSJI study to donor states (emailed to the desk) would not preclude the ECCC's work. Lee underscored that the United Nations allows for flexibility in the use of UN funds, and she has the prerogative to redeploy monies depending on shifting priorities. Two immediate areas where donors could supplement the current budget are in victim/witness support and the establishment of an audio/visual/transcript capacity within the ECCC. In response to another criticism in the OSJI report, Vissoth added that the hiring practices for the ECCC Cambodian staff are transparent and based on merit.

15. (SBU) Rupert Skilbeck, Principal Defender and head of the Defense Office at the ECCC, provided participants with an overview of his office's budget, staffing, and operational plan. He noted that his office was not envisaged in the original agreement between the UN and the RGC; however, attention must be paid to the defense side of the trials if the ECCC is to meet international standards of justice. His USD 4.7 million budget is predicated on an estimated seven defendants; Skilbeck noted that if the Co-Prosecutors agree to pursue additional cases, the budget will grow as well. He plans to pay legal defense lawyers the same as the Cambodian prosecutors are paid; such fees are far beyond those paid in Cambodia and Skilbeck cautioned the salaries will raise public relations questions once the trials begin. A second area that may change in how the defense office conducts its work is how the ECCC judges will address the role of victims

PHNOM PENH 00001983 002 OF 003

joining the criminal proceedings as civil parties, which is permitted under Cambodian law. Skilbeck noted that this question is likely to be addressed by the internal rules currently under consideration by the ECCC judges.

16. (SBU) Discussions with donors highlighted several new issues with budgetary/legal ramifications. First, there is a sense among some ECCC staff that the pre-trial chamber may have to begin its work sooner than expected with both Cambodian and international judges beginning work on a full-time basis early in 2007. An area of discussion within the rules committee revolved around absentia trials and whether the ECCC should permit them. The draft internal rules reportedly envision a central role for the judicial police, but so far the MOI has provided no clarity on their role, supervision, and authorities. A list of 25 names has been provided to the ECCC so that training can begin, but these officers have not been assigned to the ECCC; they will be made available within 48 hours notice for specific assignments and details. In a separate lunch with donors following the general meeting, Michelle Lee and others argued that the judicial police should be assigned on a full-time basis to the ECCC. She promised to remain in touch with donors on this issue should diplomatic pressure be needed to prod the RGC -- and more specifically, the MOI -- to provide the necessary cooperation and support.

17. (SBU) Aside from the issue of the judicial police, a further concern of the ECCC staff surrounds victim/witness protection. One relatively junior international staff member has joined the ECCC while the Cambodian side has two people, but Lee and others realize this is wholly inadequate. Lee noted she would be approaching donors in the near future with a more specific proposal. Separately, investigatory staff members from Petit's office have told the Embassy that they are purposefully not interviewing more sensitive witnesses at this time because of the lack of an adequate victim/witness support capacity within the ECCC.

The ECCC: Judge-led Court or Administration-led Court?

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18. (SBU) David Tolbert, formerly associated with the ICTY, visited Cambodia in late October during an OSJI-sponsored trip to work with the ECCC administrative staff on establishing a positive relationship between the various offices on both the legal and administrative sides of the ECCC. Tolbert met with Pol/Econ Chief on October 27 and outlined several areas where he sees room for improvement. Not surprisingly, some of his observations mirrored those expressed the previous day during the Friends meeting. Specifically, he identified victim/witness support as a key shortcoming, in addition to the lack of progress in establishing a judicial police unit within the ECCC. He noted that the ECCC's budget on public outreach and media was underfunded and while not an immediate priority, would be detrimental to any hopes for a legacy effect of the ECCC on Cambodia's judicial system. Another problem Tolbert highlighted was the lack of a Registrar or legal representative on the ECCC's Administrative staff. Many of the current problems are legal in nature, and might be more easily addressed if such an office existed as it does in other international tribunals, noted Tolbert. OSJI's Kelly Askin and Heather Ryan added that the question boils down to whether the ECCC will be a judge-led court or an administrative-led one. At the moment, it appears that the court is being driven by the administrative function and budgetary limitations, which OSJI believes is not optimal for delivering international standards of justice.

Comment

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19. (SBU) Much of the foregoing is not new information, and we were aware of the issues surrounding victim/witness support as well as public affairs budgetary limitations based on other meetings with ECCC personnel. Neither issue is precluding the ECCC's work and progress thus far, but will require attention over the coming weeks. However, the problems between the ECCC and the MOI concerning the role of judicial police may require diplomatic intervention, and several Missions (e.g., Canada, Germany, Switzerland) mentioned possibly coordinated action. The latter issue was

PHNOM PENH 00001983 003 OF 003

one that has frustrated Michelle Lee, who indicated she would approach donors for assistance if she did not receive satisfaction from the Ministry of Interior. End Comment.  
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